

RULEMAKING NOTICE FORM

Notice Number **2015-77**

Rule Number **He-W 606.74, He-W 806.74,
He-W 876.01**

X1. Agency Name & Address:

**Department of Health and Human Services
Division of Family Assistance
129 Pleasant St., Brown Bldg.
Concord, NH 03301**

2. RSA Authority: **RSA 167:3-c,I**

3. Federal Authority: _____

4. Type of Action:

Adoption **X**

Amendment _____

Repeal _____

Readoption **X**

Readoption w/amendment **X**

5. Short Title: **Expiring Rules Related to Allowable Deductions for the Financial Assistance and Medicaid Programs, and Eligibility for Nursing Facility Assistance**

6. (a) Summary of what the rule says and of any proposed amendments:

The Department of Health and Human Services (Department) is proposing to:

- **Readopt with amendment He-W 606.74, which specifies acceptable verification for training expenses, court-ordered child support and alimony, and wage garnishments when using any of these expenses as an income deduction for financial assistance. Requirements in He-W 606.74 relative to verification of allowable deduction amounts related to nursing facilities are being deleted and have been moved to a new rule, He-W 806.74, as this deduction is for medical assistance only;**
- **Adopt He-W 806.74, which specifies acceptable verification of court-ordered child support and alimony, wage garnishments, and current medical expenses and prior medical debts of an individual residing in a nursing facility, when using these expenses as an income deduction for medical assistance; and**
- **Readopt the substance and wording of He-W 676.01, "Financial Eligibility for Nursing Facilities" and renumber as He-W 876.01, in a new Part He-W 876 in Chapter He-W 800, where all rules associated with medical assistance will now be located. The former Part He-W 676 will be held in reserve.**
- **He-W 606.74 and the existing He-W 676.01 are scheduled to expire 6-28-15, but are subject to extension pursuant to RSA 541-A:14-a.**

Current Department policy remains unchanged.

6. (b) Brief description of the groups affected:

Financial Assistance to Needy Families and Medicaid applicants and recipients.

6. (c) Specific section or sections of state statute or federal statute or regulation which the rule is intended to implement:

Rule	RSA/ Federal Citation
He-W 606.74	RSA 167:4,I(a); RSA 167:80,IV; 45 CFR 233.20(a)(3)(xiv)(D)
He-W 806.74	RSA 167:4,I(a); 42 CFR 435.733(c)(4)(ii); 42 CFR 435.832(c)(4)(ii)
He-W 876.01 (Formerly He-W 676.01)	RSA 167:6,VII; 42 CFR 435.211; 42 CFR 435.622; 42 CFR 435.831; 42 CFR 435.840

7. Contact person for copies and questions including requests to accommodate persons with disabilities:

Name: **Catherine Bernhard** Title: **Rules Coordinator**
Address: **Dept. of Health & Human Services** Phone #: **271-9374**
Administrative Rules Unit Fax#: **271-5590**
129 Pleasant Street E-mail: catherine.l.bernhard@dhhs.state.nh.us
Concord, NH 03301

TTY/TDD Access: Relay NH 1-800-735-2964 or dial 711 (in NH)

The proposed rules may be viewed and downloaded at:

<http://www.dhhs.nh.gov/oos/aru/comment.htm>

8. Deadline for submission of materials in writing or, if practicable for the agency, in the electronic format specified: **June 12, 2015**

☒ Fax

☒ E-mail

☐ Other format (specify):

9. Public hearing scheduled for:

Date and Time: **Thursday, June 4, 2015 at 1:00 PM**

Place: [**DHHS, Brown Bldg., Room 232, 129 Pleasant St., Concord, NH 03301**](#)

10. Fiscal Impact Statement (Prepared by Legislative Budget Assistant)

FIS # **15:079**, dated **05/01/15**

1. Comparison of the costs of the proposed rule(s) to the existing rule(s):

There is no difference in cost when comparing the proposed rules to the existing rules.

2. Cite the Federal mandate. Identify the impact of state funds:

No federal mandate, no impact on state funds.

3. Cost and benefits of the proposed rule(s):

A. To State general or State special funds:

None.

B. To State citizens and political subdivisions:

None.

C. To Independently owned businesses:

None.

11. Statement Relative to Part I, Article 28-a of the N.H. Constitution:

The proposed rules do not create a new program or responsibility. The proposed rules modify an existing program or responsibility, but do not mandate any fees, duties or expenditures on the political subdivisions of the state, and therefore do not violate Part I, Article 28-a of the N.H. Constitution.

Readopt with amendment He-W 606.74, effective 06-28-07 (Document #8903), to read as follows:He-W 606.74 Allowable Deductions.

(a) Acceptable verification of allowable deduction amounts for cash assistance programs shall include:

(1) For training expenses:

- a. The same documentary evidence required under He-W 606.68 for transportation costs, special clothing, child care costs, and other allowable expenses; and
- b. A letter from an official of the training program which states that the expense is required and a receipt or other verification showing the amount which is required to be paid for the expense;

(2) For court-ordered child support, a copy of the most current court order;

(3) For court-ordered alimony, a copy of the most current court order; and

(4) For garnishments, a letter from the employer; ~~and~~

~~(5) For incurred current medical expenses and prior medical debts of an individual residing in a nursing facility:~~

- ~~a. Provider bills, reminder notices and collection agency notices which are dated within 30 days of the month to which the debt is expected to be applied;~~
- ~~b. A statement from the insurance company of the intent to pay covered charges, as indicated by an explanation of medical benefit;~~
- ~~c. The medical service provider's bill showing insurance payment;~~
- ~~d. District office collateral verification by letter or telephone with the insurance or medical provider of the charges and allowances toward medical services; or~~
- ~~e. Historical data previously known to the district office which documents the amount of the charges and allowances toward recurring medical services.~~

(b) If the individual refuses or fails to provide verification of a claimed expense, the amount of the unverified expense shall not be considered an allowable deduction.

Adopt He-W 806.74, cited and to read as follows:

PART He-W 806 VERIFICATIONS

He-W 806.74 Allowable Deductions.

(a) Acceptable verification of allowable deduction amounts for medical assistance programs that do not determine income pursuant to 42 CFR 435.603 shall include:

(1) For court-ordered child support, a copy of the most current court order;

- (2) For court-ordered alimony, a copy of the most current court order;
- (3) For garnishments, a letter from the employer; and
- (4) For incurred current medical expenses and prior medical debts of an individual residing in a nursing facility:
 - a. Provider bills, reminder notices and collection agency notices which are dated within 30 days of the month to which the debt is expected to be applied;
 - b. A statement from the insurance company of the intent to pay covered charges, as indicated by an explanation of medical benefit;
 - c. The medical service provider's bill showing insurance payment;
 - d. District office collateral verification by letter or telephone with the insurance or medical provider of the charges and allowances toward medical services; or
 - e. Historical data previously known to the district office which documents the amount of the charges and allowances toward recurring medical services.

(b) For all medical assistance programs, if the individual refuses or fails to provide verification of a claimed expense, the amount of the unverified expense shall not be considered an allowable deduction.

Readopt and renumber He-W 676, effective 06-28-07 (Document #8903), as He-W 876 and hold He-W 676 in reserve, so that He-W 876 reads as follows:

PART He-W 876 NURSING FACILITIES

He-W ~~86~~76.01 Financial Eligibility for Nursing Facilities.

(a) The department shall provide medical assistance for all the dates for which payment is requested when the following criteria have been met:

- (1) The individual has been determined eligible for categorically or medically needy medical assistance;
- (2) The individual has been determined eligible for a medical service for all dates for which medical payment is requested;
- (3) The individual has satisfied all procedural requirements; and
- (4) The individual has been physically placed at the proper level of care.

(b) Each individual applying for or in nursing facility care shall be treated as an assistance group of one.

(c) If the individual's net income, as defined in He-W 601.05(v), is greater than the rate of the nursing facility, the individual shall be eligible for in and out medically needy medical assistance, as defined in He-W 601.05(b), and the cost of the nursing facility care shall be an allowable expense for spending down to the protected income level, as defined in He-W 601.06(s).

(d) Nursing care payments shall be made only on behalf of individuals in licensed, certified nursing facilities.

(e) Individuals in licensed but uncertified nursing facilities shall be considered to be residing in an independent living arrangement.

(f) The nursing facility rate used in determining eligibility shall remain in effect until the next eligibility determination.

(g) The veteran's affairs aid and attendance allowance shall be used in full to offset the cost of nursing facility care.

(h) A deduction for the cost of health insurance shall be allowed regardless of whether the expense is mandatory or voluntary.

(i) Whenever health insurance premiums are due more frequently than monthly, the cost shall be converted to a monthly amount in accordance with He-W 652.05.

(j) Whenever health insurance premiums are due less frequently than monthly, the cost shall be averaged over the period it is intended to cover in order to obtain a monthly amount.

APPENDIX

<u>Rule</u>	<u>RSA/ Federal Citation</u>
He-W 606.74	RSA 167:4,I(a); RSA 167:80,IV; 45 CFR 233.20(a)(3)(xiv)(D)
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